

NOTICE OF INTENT

Department of Revenue Policy Services Division

Returns and Payment—Uniform State
and Local Sales Tax Definitions
(LAC 61:I.4351)

Under the authority of R.S. 47:306, R.S. 47:337.2, R.S. 47:337.18, and R.S. 47:1511 and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Revenue, Policy Services Division, proposes to amend LAC 61:I.4351 to provide for uniform state and local sales tax definitions in accordance with the provisions of Act 73 of the 2003 Regular Legislative Session.

Act 73 enacted the Uniform Local Sales and Use Tax Code, R.S. 47:337.1 et seq., to promote uniformity in the administration of state and local sales and use taxes by compiling the local sales and use tax laws in the revised statutes. Revised Statute 47:337.2(C)(2), which provides for the development of uniform state and local sales and use tax regulations, allowed local sales tax collectors until January 1, 2004, to file written requests with the Secretary of Revenue for amendments to any Department of Revenue regulation in effect on July 1, 2003, so that the regulation applies to both state and local sales and use taxes. Local collectors, through the Louisiana Association of Tax Administrators, filed a request with the Secretary of Revenue in December 2003 for amendments to several regulations. Requested amendments to the sales tax definitions are included in this Notice of Intent.

Title 61

REVENUE AND TAXATION

Part I. Taxes Collected and Administered by the Secretary of Revenue

Chapter 43. Sales and Use Tax

§4351. Returns and Payment of Tax, Penalty for Absorption of Tax

A. General. All persons and dealers who are subject to *state* or *local sales or use tax* are expected and required to file a tax return monthly, unless otherwise provided, and to remit the amount of tax due to the *collector*. Forms will be provided by the *collector*, and although the forms are usually mailed to each dealer, failure to receive same will not relieve the dealer of the necessity of filing and remitting the tax due currently. For the purpose of collecting and remitting *state* and *local sales or use tax*, the dealer is hereby declared to be the agent of the *taxing authority*.

1. After a dealer is properly registered for sales and use tax purposes, an identifying sales tax number is assigned to that dealer. The assignment of a regular sales tax number requires a dealer to file a monthly return and failure to do so will cause the *collector* to send an estimated proposed assessment. For months when the dealer has no taxable sales or amounts to report, the return should be marked "no sales or taxable amounts," signed by the dealer and filed with the *collector*. Monthly returns are required to be filed with the *collector* on or before the twentieth day of the month following the month in which the tax becomes effective.

2. The *collector*, for good cause, may extend, for a period not to exceed 30 days, the time for making any returns required under Chapter 2 of Title 47 of the Louisiana Revised Statutes of 1950, as amended, or the Uniform Local Sales Tax Code. Failure of the dealer to abide by the agreement and file returns and remittances as required will result in an immediate cancellation of the extension agreement by the *collector*.

3. a. Solely for *state sales or use tax* purposes, the tax computed to be due by the dealer is payable at the time the return is due, and failure to do so will cause the secretary to issue a 10-day demand assessment. Failure to file the returns on or before the due date, will subject the dealer to delinquency charges, loss of vendor's compensation and other charges as provided by law. See R.S. 47:1519 for information on electronic funds transfers (EFT).

b. Solely for *local sales or use tax* purposes, refer to R.S. 47:337.18(A) for guidance on the filing of sales tax returns and payment of the tax.

4. ...

5. The dealer is compensated for accounting for and remitting the *state sales or use tax* at the rate established by R.S. 47:306. Local ordinances govern the rate of compensation, if any, for accounting for and remitting *local sales or use tax*. The amount of compensation is computed by multiplying the rate by the amount of tax due and deducting that amount from the total tax accounted for and payable to the *collector*, before taking credit for taxes already paid to a wholesaler.

6. ...

B. Exceptions. Not all dealers are required to file returns on a monthly basis.

1. a. Solely for *state sales or use tax* purposes, upon registration, all dealers are required to file monthly returns. After the *dealer* has operated for a few months, and it is determined that the amount of

tax liability averages less than \$500 per month, the *dealer* will be notified and required to file quarterly returns. Application to file quarterly is not necessary, as notification is automatic once a determination is made by the secretary that such a filing procedure is in order. Quarterly returns should be filed on or before the twentieth day of the first month of the next succeeding quarter. Irregular sales tax returns and use tax returns should be filed on or before the twentieth day of the month following the month in which the taxable transaction occurred. The returns should be prepared in a manner that will enable the secretary to ascertain the correctness of the tax computed to be due. Accordingly, each line of the tax return should be completed, and all amounts not taxable should be identified.

b. Solely for *local sales or use tax* purposes, R.S. 47:337.18(A)(1)(b)(i) requires a *dealer* to file quarterly returns whenever the taxes due average less than thirty dollars per month.

2. A *dealer* may file returns using alternate filing periods. The method for filing shall be approved by the *collector* before the method is used to file a return. If an alternate period filing method is approved for use, the number of short periods during a year must be greater than or equal to the number of long periods during that same year. At the beginning of each year the dealer must, after obtaining approval for the alternate period filing method, file with the *collector* a calendar for the year showing the alternative filing periods for that year. Amendments to approved calendars must be submitted for approval prior to the affected periods. The taxpayer's account shall be reviewed to determine if the taxpayer has correctly filed returns, according to the calendar submitted at the beginning of the year. If the taxpayer does not follow the approved alternate filing method, the returns for the year under review shall be converted to a calendar month basis and the taxpayer's request to use an alternate period filing method for the subsequent year will be denied. Alternate period returns shall be filed on or before the twentieth day following the close of the alternate filing period. Failure to file on or before this date will subject the dealer to delinquency charges, loss of vendor's compensation, and other charges as prescribed by law.

C. Advance Sales Tax. R.S. 47:306(B) was amended in 1965, to require all manufacturers, wholesalers, jobbers, suppliers, and brokers of tangible personal property to collect an advance payment of *state sales or use tax* on sales of all tangible personal property, and such payment is required only as a means of facilitating collection of

the sales tax. Previous to this amendment, such sales of tangible personal property were considered exempt for taxation since under the statute, wholesale sales were not taxable. Accordingly, these new dealers were required to register with the *secretary* in order to collect and remit advance *state sales or use tax* from the sale of all tangible personal property made to retail dealers who resell the property to final users and consumers. The advance payment of the *state sales or use tax* is required upon all sales of tangible personal property to other dealers unless, specifically exempted by statute, or Form LGST-9 is obtained and kept on file by the dealer making the sale. Exemption certificate LGST-9 will only be recognized if the dealer making the purchase of tangible personal property states that the purchases are for resale or further processing by wholesale dealers and manufacturers. Those businesses purchasing property for resale that qualify as "wholesale dealers" can be exempted from the payment of the advance *state sales or use tax*.

1. - 6. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:306, R.S. 47:337.2, R.S. 47:337.18, and R.S. 47:1511.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Sales Tax Section, LR 13:107 (February 1987), amended by the Department of Revenue and Taxation, Sales Tax Division, LR 22:852 (September 1996), amended by the Department of Revenue, Sales Tax Division, LR 23:1530 (November 1997), amended by the Department of Revenue, Policy Services Division, LR 30:

Family Impact Statement

As required by Act 1183 of the 1999 Regular Session of the Louisiana Legislature the following Family Impact Statement is submitted to be published with the Notice of Intent in the *Louisiana Register*. A copy of this statement will also be provided to our Legislative Oversight Committees.

1. The effect on the stability of the family. Implementation of these proposed amendments will have no effect on the stability of the family.

2. The effect on the authority and rights of parents regarding the education and supervision of their children. Implementation of these proposed amendments will have no effect on the authority and rights of parents regarding the education and supervision of their children.

3. The effect on the functioning of the family. Implementation of these proposed amendments will have no effect on the functioning of the family.

4. The effect on family earnings and family budget. Implementation of these proposed amendments will have no effect on family earnings and family budget.

5. The effect on the behavior and personal responsibility of children. Implementation of these proposed amendments will have no effect on the behavior and personal responsibility of children.

6. The ability of the family or a local government to perform the function as contained in the proposed Rule. Implementation of these proposed amendments will have no effect on the ability of the family or a local government to perform this function.

Interested persons may submit data, views, or arguments, in writing to Raymond E. Tangney, Senior Policy Consultant, Policy Services Division, P.O. Box 44098, Baton Rouge, LA 70804-4098 or by fax to (225) 219-2759. All comments must be submitted by 4:30 p.m., Friday, October 22, 2004. A public hearing will be held on Tuesday, October 26, 2004, at 10 a.m. at the Department of Revenue Headquarters Building, 617 North Third Street, Baton Rouge, LA.

Raymond E. Tangney
Senior Policy Consultant

FISCAL AND ECONOMIC IMPACT STATEMENT

FOR ADMINISTRATIVE RULES

RULE TITLE: Returns and Payment—Uniform State and Local Sales Tax Definitions

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

Acts 2003, No. 73 enacted R.S. 47:337.1 et seq., the Uniform Local Sales Tax Code. R.S. 47:337.2(C)(2), which provides for the development of uniform regulations that are common to both state and local sales tax laws, allowed local sales tax collectors until January 1, 2004, to request the Secretary of Revenue to amend any Department of Revenue regulation in effect on July 1, 2003, concerning a common sales tax law so that the regulation applies uniformly to both state and local sales and use tax laws. The proposed amendments to LAC 61:1.4351 are in response to requests received from local sales tax collectors. Implementation of these proposed amendments, which make no changes to the administration of state or local

sales and use tax laws regarding transactions subject to tax, will have no effect on state or local governmental unit costs.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There should be no effect on the revenue collections of state or local governmental units as a result of these proposed amendments. Act 2003, No. 73 allowed local tax collectors to request amendments to provide for the uniform application of sales and use tax laws common to state and local impositions. The amendments requested by the local tax authorities reflect the current administration of the state and local sales and use tax laws and will have no effect on state or local sales tax revenues.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

These proposed amendments will have no effect on economic costs or benefits to Louisiana taxpayers since they do not alter the manner in which state or local sales and use tax laws are administered. Taxpayers will benefit by having a single source of regulations for state and local sales and use taxes.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

These proposed amendments will have no effect on competition or employment.

Cynthia Bridges
Secretary
0409#026

H. Gordon Monk
Staff Director
Legislative Fiscal Office